hallowed task of legal reform in the right spirit, if we approach it not rashly but reverently—without pride or prejudice—free alike from the prejudice that clings to everything that is old, and turns away from all improvement; and from the pride of opinion, that, wrapped in fancied wisdom, disdains to profit either by the experience of our own times or the recorded knowledge of past generations:" Verplanck's Speech in N. Y. Senate, p. 30 and 31.

T. B.

RECENT AMERICAN DECISIONS.

Supreme Judicial Court of Maine.

SARAH M. PIPER *vs.* CHARLES D. GILMORE.

Certain notes payable to A. were by him deposited with B., in pledge as security for his indebtedness to B. C., being desirous of collecting a claim of his own against A., made inquiries of B. as to the notes; and B., without being informed of the purpose of the inquiry, replied that the notes belonged to A.:—Held, that, without proof that B. intended to deceive C. to his injury, these facts do not operate as an *estoppel in pais*, to prevent B. claiming money paid to him on the notes, notwithstanding the money was attached and seized by C. at the time of payment.

In such a case, in order that B. should be estopped from setting up a title to the money, it must be shown that he wilfully gave false information to C., with an intention to deceive him, and to induce him, on the faith of it, to act in a different manner than he otherwise would have done, whereby C. was led to change his action, and was thereby injured.

TRESPASS against the defendant as sheriff of Penobscot county, to recover damages for his taking $290 in specie, alleged to be the property of the plaintiff. Plea the general issue, with a brief statement justifying the taking of the money as the property of Mark W. Piper, by virtue of a writ of attachment in favor of Henry Pendexter, against Mark W. Piper and Martin V. B. Piper. The action, Pendexter *vs.* Piper, was entered and prosecuted to judgment, and the $290 applied to satisfy the execution.

In July, 1854, Pendexter, having bought a farm of Mark W. Piper and Martin V. B. Piper, gave them his notes for $800, and

a mortgage of the farm as security. The notes not having been paid, the mortgagees gave notice of their intention to foreclose it. May 19, 1856, Martin assigned his interest in the notes and mortgage to the plaintiff.

There was evidence tending to show that Mark was, at the time of Martin's assignment, indebted to the plaintiff, $425 and interest; that Martin delivered Mark's share of the notes and mortgage to the plaintiff, Mark being then in New York; that, on his return to Kenduskeag in 1857, he obtained further advances of the plaintiff, and agreed with her that she might hold the notes and mortgage as security.

In 1858, R. S. Prescott, agent of Pendexter, and of the owner of the equity of redemption in the farm, asked the plaintiff if Mark owned half of the notes. She replied that he did: that she "had no control so as to allow for the oats, on Mark's part, but no doubt Mark would do what was right."

Soon afterwards, Prescott caused the writ in *Pendexter* vs. *Piper & al.* to be made and delivered to an officer, and when Pendexter paid his mortgage-notes, the officer attempted to seize the specie, and succeeded, after a struggle, in securing $290, the plaintiff retaining the balance.

There was evidence that Mark W. Piper at the time owned real estate in Kenduskeag, which the officer did not attach.

CUTTING, J., presiding, instructed the jury, that if the plaintiff told the agent of Pendexter that Mark owned half of the notes and mortgage, and he was deceived by such declarations, whatever the knowledge or intention of the plaintiff, and attached the specie on the strength of such declaration, and was thereby injured, the plaintiff could not be allowed to claim title to the money attached. And if Mark had other property which could have been attached by Pendexter, and he was deceived by the plaintiff's declarations, and did not attach such property, the jury might consider whether this was an injury to Pendexter.

It did not appear that Mark or Martin was insolvent at the time, nor that the plaintiff knew that Pendexter was about to attach the money, or made any claim to the notes or money, or was about to commence or had commenced a suit.

The jury returned a verdict for the defendant. The presiding judge inquired of them, to whom they found the money belonged, and they replied that they did not consider that question.

The plaintiff filed exceptions to the instructions of the Court.

McCrillis & Mace, for the plaintiff.

Rowe & Bartlett, for the defendant, argued that if the attachment was induced by the plaintiff's representations, she could not maintain an action for damages arising from it. *Rangely* vs. *Spring*, 21 Maine 130; *Hatch* vs. *Kimball*, 16 Maine 146; 1 Story's Equity, § § 385, 387, 390.

Declarations made by one party, and acted upon by the other, and his action thereby changed to his injury, operate in the way of *estoppel* upon the party making them. *Dewey* vs. *Field*, 4 Met. 381; *Stone* vs. *Dunkin*, 2 Camp. 344; *Harding* vs. *Carter*, cited by Parke on Ins. 4; *Chapman* vs. *Searles*, 3 Pick. 38; *Heame* vs. *Rogers*, 8 Barn. & Cress. 577; *Lewiston Falls Bank* vs. *Leonard*, 43 Maine 344.

The opinion of the Court was delivered by

MAY, J.—In determining the correctness of the instructions complained of, we may, with propriety, assume that the notes, upon which the money attached by the defendant's deputy was paid to the plaintiff, were, as against Mark W. Piper, rightfully held by her as security for his liabilities. She seems to have held his share as a pledge for that purpose. The testimony shows that, while she so held them, Prescott, the agent of the attaching creditor, and of the owner of the equity of redemption in the premises mortgaged to secure said notes, called upon her and inquired "if Mark W. Piper owned half the notes;" and she replied that "she had bought Martin's part, and that Mark's part of the mortgaged notes was his. She had no control, so as to allow for the oats, on Mark's part. No doubt he would do what was right."

She does not appear to have been apprised of the agency of Prescott, nor of any desire on his part to make an attachment to secure the demand of Henry Pendexter, his principal, which was

afterwards put in suit. The notes were not attachable, and there is no evidence that she then knew that payment of the notes would soon be made, if made at all. At this time, Mark W. Piper was the general owner of his half therein, and, if not paid, the loss would fall upon him. There had been no written assignment of his part to the plaintiff. Her title to them was but an equitable title, but the money due upon them when paid, according to the arrangement of the parties, would become hers. The receipt of it would so far operate as a payment of her debt against Mark. She did not say that the money, when paid, would not be hers. Strictly speaking, therefore, there was no falsehood in the statement that "Mark's part of the mortgaged notes was his."

Under these circumstances, the jury was instructed "that if the plaintiff told the agent of Pendexter that Mark owned one-half of the notes and mortgage, as testified to, and he was deceived by such declarations, whatever the knowledge or intention of the plaintiff, and attached the specie on the strength of such declarations, and has been thereby injured, the plaintiff could not now be allowed to claim title to the money attached." This instruction makes the knowledge and intentions of the plaintiff touching her statements wholly immaterial. By it, she is estopped from showing the honesty of her purposes, the truth of her statements, or her ignorance of the purposes, wishes, or rights of the attaching creditor. Is such an instruction in conformity with the law?

Estoppels *in pais* are created by the law for the purpose of doing justice. They are called equitable estoppels, in contradistinction to an estoppel by a deed or record. Whether they exist in specific cases is often a question of great difficulty. The rules of law in regard to them seem to be well established. They may arise from a variety of facts, and often depend in a great degree upon the relations which exist between the parties. The general rule of law in regard to them, in England and this country, is, that "a party will be concluded from denying his own acts or admissions, which *were expressly designed* to influence the conduct of another, and did so influence it, and when such denial will operate to the injury of another." *Cummings, adm'r.*, vs. *Webster*, 43 Maine 192;

Rangely vs. *Spring*, 21 Id. 130; *Wallis* vs. *Truesdell*, 6 Pick. 455; *Welland Canal Co.* vs. *Hathaway*, 8 Wend. 430. The rule, as laid down in *Pickford* vs. *Sears & al.*, 6 Ad. & Ellis 469, is, that "where one, by his words or conduct, *wilfully* causes another to believe in the existence of a certain state of things, and induces him to act on that belief, or to alter his own previous position, the former is concluded from averring against the latter a different state of things, as existing at the same time." In all the cases where an estoppel has been held to exist, it is believed that it will appear, upon examination, that there was some evidence tending to show that the party estopped had some knowledge of the rights, interests, or intentions of the other party, or of his relations to the thing to which his declarations or acts related; or, that he had some intention of misleading the other party into some action that might be prejudicial to him. In every case there will be found some degree of bad faith, either expressly designed or constructive. The authorities, wherever the question has been raised, most, if not all of them, agree that the declarations or conduct must have been wilful in order to have the estoppel attach.

What is meant by the term wilful is well determined, not only in England but in our own state. In the case of *Freeman* vs. *Cooke*, 6 Dowl. & L. 187, and 2 Exch. 654, it was decided that unless the statement was *intended* to induce the other party to act on the faith of it, or was such that a reasonable person would act upon the faith of it, *believing that it was intended by the party making it that he should so act*, no estoppel would be created, notwithstanding the other party did in fact believe the statement, and was induced to alter his position accordingly. See Harrison's Dig. vol. 7, p. 614, Phila. ed., and cases there cited. The rule upon this point is, that *whatever a man's real meaning may have been, he must so conduct himself that a reasonable man would take the representation to be true, and believe that it was meant that he should act upon it*, or the party making the representation will not be precluded from contesting its truth. Such is also the settled law of Connecticut. *Taylor & al.* vs. *Ely & al.*, 25 Conn. 250; *Preston* vs. *Mann & al.*, Id. 118.

In commenting upon the general rule in regard to estoppels *in pais*, as laid down in *Pickard* vs. *Sears & al.*, before cited, WHITMAN, C. J., in the case of *Copeland* vs. *Copeland*, 28 Maine 525, remarks, that "in the position thus established, it must be observed that several things are essential to be made out in order to the operation of the rule; the first is, that the *act or declaration of the person must be wilful*, that is, with knowledge of the facts upon which any right he may have must depend, or with an intention to deceive the other party; he must, at least, it would seem, *be aware that he is giving countenance to the alteration of the conduct of the other, whereby he will be injured if the representation be untrue.*"

In the case of *Morton, adm'r.*, vs. *Hodgdon*, 32 Maine 127, it is said by WELLS, J., in the opinion concurred in by the Court, that, "before one can be conclusively bound by a declaration made in relation to his interest in property, such declaration must be *designed* to influence the conduct of the person to whom it is addressed, and must have that effect." The facts in this case will be found to be not very dissimilar from the present case. The declaration there relied on was held not to have been wilful, because it appeared that the party making it *did not know that the other party had any demand against Clark, nor that he needed or had any occasion for information on the subject.* The same learned Judge, in *Sullivan* vs. *Parks*, 33 Maine 438, says, in delivering tho opinion of the Court, that, "the declarations of a party, which should estop him, as to a third person, *must be made to one who has a right to know the relations of the party to the property in question; if made only to a person having no such right, they would not necessarily create an estoppel.*"

In the case before us, the limitation or qualification of the general rule, relating to estoppels *in pais*, as shown by the preceding authorities, seems to have been overlooked; and the instructions given, being in direct conflict with such limitation or qualification, are manifestly erroneous. It becomes unnecessary to consider the other instructions.

Exceptions sustained.

TENNEY, C. J., RICE, APPLETON, CUTTING, and KENT, JJ., concurred.

We are indebted to the courtesy of Mr. Justice MAY for the foregoing opinion. It comes so precisely into the line of argument which we adopted in the note to the case of Insurance Co. *v.* Brooks, in our May number, that we shall not, perhaps, be expected to add much to what we there said upon the precise point of the ground of estoppels *in pais*.

We have long been impressed with the wonderful advance made by the American courts in the last thirty years, in giving a conclusive effect to estoppels of all kinds. As long ago as the case of Isaacs *v.* Clark, 12 Vt. R. 692 (1839), the doctrine of estoppels was so lame and so unsettled that we found a decided reluctance in the court about enforcing the rule against the party who had once tried the same question between the same parties, on the ground that the verdict passed upon an incidental and collateral question in the former cause: and that the finding of the jury was not placed upon the record, and could not, therefore, be pleaded as an estoppel of record. But the ultimate decision was in favor of the estoppel, at which we felt some gratification, regarding it as an advance in the right direction.

We reviewed the whole ground in Gray *v.* Pingrey, 17 Vt. R. 419, and attempted to define the proper distinction between pleading estoppels and giving them in evidence before the jury, and the comparative conclusiveness of the one or the other mode of urging the same. It seemed to us that this last case carried the doctrine of estoppels of record to the utmost verge, the very *Ultima Thule* of the law upon that point, at that time. But it has already advanced far beyond the point there assumed. We do not desire to bring in question the doctrine of estoppels of record. But we have always regarded the rule of law by which a former verdict is made to apply, as an estoppel, upon matters and questions not defined upon the record, and which cannot be determined in any after proceeding without resort to parol proof, involving an inquiry into the deliberations of the jury-room, as having carried this doctrine quite up to the extreme line of safety. We should regard estoppels of this character as not a little odious, in the language of the old books.

On the other hand, while the doctrine of estoppels of record has been advancing to greater stringency, that of estoppels *in pais* has been constantly relaxing of late. It was at one time supposed that if a party inquired of by a mere intruder, denied his interest in any subject-matter of the inquiry, he was for ever estopped from setting up such interest, not only against the party inquiring, but as to all other parties to whom such denial had been communicated. But this broad rule is clearly not maintainable. The only just basis of estoppels *in pais* is good faith and fair dealing. It is now clearly settled that the disclaimer, to become binding upon the party, must be made to one bonâ fide seeking information for the protection of his rights, and that he must have acted upon it before it will become binding upon the party making it: Downe *v.* Flint, 28 Vt. R. 527; or else the party must stand by and see another party purchase the property to which he claims title, upon the belief that he is acquiring full title: Miller *v.*

Bingham, 29 Vt. R. 82. No party is estopped by a declaration made in ignorance of his rights: Thrall *v.* Lothrop, 30 Vt. R. 307. The declaration must be made with the intent to lead another to believe the person making the declaration will assert no claim, and it must thus mislead the other to his detriment: White *v.* Langdon, 30 Vt. R. 599. After considerable discussion and reflection in Strong *v.* Ellsworth, 26 Vt. R. 366, the rule was thus declared: "He who by his words, or his actions, or his silence even, intentionally or carelessly induces another to do an act, which he would not otherwise have done, and which will prove injurious to him if he is not allowed to insist upon the fulfilment of the expectation upon which he did the act, may insist upon such fulfilment; and equally if he has omitted to do any act, trusting to the assurance of some other thus given, and which omission will be prejudicial to him; if the assurance is not made good, he may insist it shall be made good." From the recent English case of Swan *v.* The North British Australasian Company, 10 Jur. N. S. 102 (1864), in the Exchequer Chamber, it would seem that carelessness, to amount to an estoppel upon the party, as to asserting the truth in his favor, must be what the law denominates criminal or culpable, *crassa negligentia.*

I. F. R.

Supreme Court of Pennsylvania.

SCHOLLENBERGER *vs.* BRINTON.

The sum agreed in a ground-rent deed to be paid for the extinguishment of the ground-rent is not an estate, but a debt when the owner of the land has elected to pay it.

The clause for the extinguishment of the rent on payment of a certain sum, does not make the contract a mere offer to sell hereafter on certain conditions, but a present and complete sale with an alternative mode of payment at the option of the grantee.

Therefore where a ground-rent is payable by the terms of the deed, in "lawful *silver money* of the United States," and there is a clause of extinguishment on the payment of a certain sum "lawful money, as aforesaid;" the latter is payable in legal tender notes of the United States.

At Nisi Prius, May 1864, the opinion of the Court was delivered by

AGNEW, J.—This is a demurrer to the complainant's bill, brought for specific performance, to compel the defendant to execute a release and extinguishment of a ground-rent. The defendant sold to John McDowell, whose title complainant owns, a lot in Phila-